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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,706	09/08/2003	Wallace F. Krueger	03160	3173
20879	7590	03/12/2007		
EMCH, SCHAFFER, SCHAUB & PORCELLO CO P O BOX 916 ONE SEAGATE SUITE 1980 TOLEDO, OH 43697			EXAMINER BASHORE, ALAIN L	
			ART UNIT	PAPER NUMBER
			1762	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

10/658,706

**Applicant(s)**

KRUEGER, WALLACE F.

**Examiner**

Alain L. Bashore

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 118-120 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 118-120 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 118-119 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of LoPresti et al and Oliphant.

Johnson discloses a method for applying a fluid to an object including providing a fluid in a container, providing an applicator tip (having applicator surface) to apply fluid. The fluid is supplied through a small diameter tube being in fluid communication between the container and tip. The fluid is pumped by a pump (fig 1; col 7, lines 45-64).

Since one with ordinary skill in the art would not want spillage, there would be inherently be present "said fluid only contacts said container, small diameter tube, said applicator surface and said object".

Since the pump disclosed is held fixedly within fluid communication, there is present a "pump that engages the exterior surface of said small diameter tube" by virtue that any tube must be engaged at least with the housing (or part thereof) of a pump.

There is not disclosed to Johnson:

a small diameter tube that:

extends "into said container";

"that can be removed from the container"; and

has a diameter from about 1/16 to about 5/16 of an inch.

LoPresti et al discloses the small diameter tube extending into said container and that can be removed from the container (fig 6; col 3, lines 6-18).

It would have been obvious to one with ordinary skill in the art to include the small diameter tube extending into said container because LoPresti et al teaches use of pressure differentiation for flow fluid movement purposes (col 4, lines 63-67).

It would have been obvious to one with ordinary skill in the art to include the small diameter tube that can be removed from the container because LoPresti et al teaches clean-up (col 3, lines 45-50).

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Oliphant discloses a supply conduits for applying a fluid having the specific inch within the diameter range claimed by applicant (col 5, lines 49-52).

It would have been obvious to one with ordinary skill in the art to include the specific diameter range claimed by applicant because Oliphant teaches such for purposes viscosity liquid requirements (col 5, lines 49-52).

3. Claim 120 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of LoPresti et al and Oliphant as applied to claims above, and further in view of Figini et al.

Johnson and LoPresti et al do not disclose tube constriction by pump engagement to restrict flow.

Figini et al discloses tube constriction by pump engagement to restrict flow (fig 2).

It would have been obvious to one with ordinary skill in the art to include tube constriction by pump engagement to restrict flow because Figini et al discloses optimal application (col 1, lines 19-24).

***Response to Arguments***

4. Applicant's arguments filed 1-18-07 have been fully considered but they are not persuasive.

Tube removal would have been obvious to one with ordinary skill in the art for the purposes of cleaning/repair.

Regarding the prior art not showing the tube "in contact" with the application surface, the claims as current amended do not require direct contact, so that any intermediate structure would be sufficient to read on the claims.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alain L. Bashore whose telephone number is 571-272-6739. The examiner can normally be reached on about 7:30 am to 5:00 pm (Mon. thru Thurs.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on 571-272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alain L. Bashore  
Primary Examiner  
Art Unit 1762